



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

LDEQ RECEIPT

2017 FEB 17 AM 9:41

JAN 27 2017

Mr. Estuardo Silva
Waste Permits Administrator
Louisiana Department of Environmental Quality
P.O. Box 4313
Baton Rouge, Louisiana 70821-4313

RE: United States Environmental Protection Agency (EPA) Region 6 Comments for Draft Solid Waste Permit and Technically Complete Solid Waste Permit Application (December 22, 2016) for the Thermaladyne, LLC facility located in Port Allen, West Baton Rouge Parish, Louisiana; EPA ID ARD089234884; Permit No. 11H-RN2.

Dear Mr. Silva:

At the request of the Louisiana Department of Environmental Quality (LDEQ), EPA Region 6 reviewed the Draft Solid Waste Permit and Technically Complete Solid Waste Permit Application for the facility referenced above. In the application, the facility states that it is a petroleum refinery (SIC code 2911) and claims an exclusion for handling oil-bearing hazardous secondary materials in a refinery process based on L.A.C. 33:V.105.D.1.1.i. The Federal reference for this exclusion is 40 CFR 261.4(a)(12)(i). Region 6 provided an initial response to LDEQ on the facility's exclusion claim on December 20, 2016 (see enclosure). The following comments are provided in response to LDEQ's public comment period on the facility's draft permit, which closes on January 23, 2017.

To conduct our review, we evaluated the background documents used to develop the exclusion. The Background Listing Document (BLD) was developed as part of the rulemaking process for excluding oil-bearing hazardous secondary materials from the definition of solid waste under the Resource Conservation and Recovery Act (RCRA) Subpart C regulations. The BLD examined numerous refineries and their operations in order to establish the identified exclusion, including the types and quantities of materials generated at these refineries, as well as, the processes that comprise petroleum refining into which these materials are ultimately inserted. All petroleum refineries that were reviewed shared at least two elements: the facility used *crude oil* as a feedstock to develop a *finished product*. As noted in the BLD, EPA relied upon the Department of Energy (DOE) Petroleum Supply Annual from 1992 to identify the universe of petroleum refineries potentially affected by the rule. DOE's Energy Information Administration defines Petroleum Refinery as an installation that manufactures finished petroleum products from crude oil, unfinished oils, natural gas liquids, other hydrocarbons, and alcohol (<https://www.eia.gov/tools/glossary/index.cfm?id=P>).

The exclusion is conditioned upon the oil-bearing secondary materials from a petroleum refinery being inserted into the same petroleum refinery where they are generated, or sent

directly to another petroleum refinery. However, in the preamble to the Final Rule adopting the current Federal oil-bearing hazardous secondary materials exclusion, EPA stated its concern regarding materials that are generated at one petroleum refinery that are sent to an intermediate non-refinery facility for processing. That is to say, that as a condition of the exclusion, the hazardous secondary materials are at the generating facility or at the receiving facility, or in transit between. The materials lose the exclusion if they are not processed at a petroleum refinery facility. The material must remain in the petroleum manufacturing process. (See 63 F R 42110, at 42118, August 6, 1998). The processing of oil-bearing hazardous secondary materials in units such as centrifuges and thermal desorption units is not uncommon. While EPA has not defined Thermal Desorption Unit in regulation, in September 2012 (https://clu-in.org/download/Citizens/a_citizens_guide_to_thermal_desorption.pdf) EPA identified thermal desorption units as a treatment technology when it stated "thermal desorption removes organic contaminants from soil, sludge, or sediment by heating them in a machine...to evaporate the contaminants."

In correspondence between the facility and the LDEQ, the facility claims that the unit is using fractionation to produce a residual fuel oil. However, EPA does not agree that this process renders the facility a petroleum refinery for purposes of RCRA regulation. The application of heat to distill (separate) hydrocarbons from a matrix is not sufficient to define a facility as a petroleum refinery for the purposes of the exclusion mentioned here. If it were, a variety of other facilities might also meet the definition of petroleum refinery. EPA has described refining operation in correspondence, including a 1991 letter by David Bussard, Director of the Characterization and Assessment Division of EPA to Frank Dixon, "the Agency does not consider used oil-based processes that produce fuel to be refining operations '(in spite of the use of distillation) because they do not produce fuels from crude oil.'" Furthermore, "the Agency clearly did not intend for used oil distillation processes (and, by extension, other oil recovery processes) to be considered petroleum refining processes, even when oil-bearing petroleum refining hazardous wastes are used as a feedstock in the used oil distillation process."

([https://yosemite.epa.gov/osw/rcra.nsf/ea6e50dc6214725285256bf00063269d/7F0ABBFA9A2DC7108525670F006BE49D/\\$file/11574.pdf](https://yosemite.epa.gov/osw/rcra.nsf/ea6e50dc6214725285256bf00063269d/7F0ABBFA9A2DC7108525670F006BE49D/$file/11574.pdf))

In summary, based on our review of the draft permit and the applicable regulations and background documents, and the information provided via conference call with the facility and LDEQ on January 13, 2017, we are of the opinion that this facility is not a refinery and would not qualify for the exclusion referenced above. Specifically, the facility is not engaged in processes indicative of refinery operations. In the facility permit application, the Operational Plan and the Waste Acceptance Plan identify wastes from a variety of sources that could be outside the refinery process. The "fractionation" performed by the facility is not the type of fractionation indicative of a refinery. This facility would be appropriately classified as SIC code 4953 (Refuse Systems) as this facility is applying a treatment technology to recover a product from a hazardous waste. As such, we would expect the facility to be permitted with a RCRA Subpart C Hazardous Waste Permit for the thermal treatment of a hazardous material.

In addition, generators of the oil-bearing hazardous secondary materials are required to manifest this material as a hazardous waste and they have the responsibility to send it to a properly permitted RCRA facility for treatment. Failure to do so may result in an enforcement action on the generator of the hazardous waste.

If you have any questions regarding this letter, please contact me at (214) 665-8022.

Sincerely,

A handwritten signature in cursive script, appearing to read "Susan Spalding".

Susan Spalding
Associate Director for RCRA
Hazardous Waste Branch
Multimedia Division, EPA Region 6

Enclosure

cc: Ann Finney (LDEQ)

